

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

APR 9 1999

PATRICK FISHER
Clerk

BERNADETTE SETSER,

Petitioner - Appellant,

v.

PENNY LUCERO, Warden, New
Mexico Women's Correctional
Facility; ATTORNEY GENERAL
STATE OF NEW MEXICO,

Respondents - Appellees.

No. 98-2345

D. New Mexico

(D.C. No. CIV-98-11-LH/DJS)

ORDER AND JUDGMENT *

Before **ANDERSON** , **KELLY** , and **BRISCOE** , Circuit Judges.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

*This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

Bernadette Setser seeks a certificate of appealability to challenge the district court's denial of her 28 U.S.C. § 2254 petition. Because Setser has not made a substantial showing of the denial of a constitutional right, see 28 U.S.C. § 2253(c)(2), we deny a certificate and dismiss this appeal.

Setser raised three claims in her petition: (1) that her confessions should have been suppressed at trial; (2) that tardy disclosure of a witness statement denied her confrontation rights and constituted prosecutorial misconduct; and (3) that she was denied a right of allocution. The magistrate judge conducted a searching analysis of each claim and determined that each lacked merit, and the district court adopted the magistrate judge's Proposed Findings and Recommended Disposition in toto, after a de novo review. We have undertaken a thorough review of the magistrate judge's Proposed Findings and Recommended Disposition and of the authorities cited therein. We have also carefully examined each of the authorities cited by Setser in her Application for Certificate of Appealability. We are satisfied that the magistrate judge's conclusions are entirely correct.

We note that in her objections to the magistrate judge's Proposed Findings and Recommended Disposition, Setser raised (or at least alluded to) arguments that were not raised in her petition and which the district court did not address. "Issues raised for the first time in objections to the magistrate judge's

recommendation are deemed waived.” Marshall v. Chater, 75 F.3d 1421, 1426 (10th Cir. 1996).

Accordingly, we DENY a certificate of appealability and DISMISS this appeal.

ENTERED FOR THE COURT

Stephen H. Anderson
Circuit Judge